

**TESTIMONY OF KURT BARWIS
PRESIDENT & CHIEF EXECUTIVE OFFICER
BRISTOL HOSPITAL, INC.
BEFORE THE COMMITTEE ON INSURANCE AND REAL ESTATE
Thursday March 3, 2011**

H.B. No. 6471, An Act Prohibiting Most Favored Nation Clauses in Health Care Provider Contracts

My name is Kurt A. Barwis and I am the President & Chief Executive Officer of Bristol Hospital. On behalf of Bristol Hospital I appreciate the opportunity to testify in support of H.B. No. 6471, *An Act Prohibiting Most Favored Nation Clauses in Health Care Provider Contracts*.

The adoption of legislation prohibiting the use of most-favored nations ("MFN") clauses in health care provider contracts is important because it will enhance health care insurance competition in Connecticut. Nineteen (19) states have already enacted similar legislation and in addition, the United States Department of Justice has attacked MFN's in litigation which has been commenced. A listing of all states which have already enacted such legislation is attached hereto as EXHIBIT I. The existence of MFN clauses in health care provider contracts harms the public in the following ways:

- **Anti- Competitive Effects of MFN Clauses:** MFN clauses limit competition and allow large insurers to dictate terms and conditions, and perpetuate and enhance market concentration. This is because MFN clauses limit and deter entry to the market by other insurers and payers. Even large insurers, such as United Health Care, have found that they cannot fairly compete in markets where MFN clauses are being used by a competitor.
 - With the exception of the Charter Oak Health Plan which Bristol Hospital could not initially contract with due to the existence of an MFN clause in its largest payer contract, and Medicaid/Medicare Managed Care Plans which are exempted from MFN clauses, Bristol Hospital has been approached twice during the last four (4) years, both by a health insurance companies covering primarily workers compensation, one also provided Third Party Administration "TPA" services.
- **Cost Associated with the Negotiation and Enforcement of MFN Clauses:** The existence of MFN clauses in contracts requires health care providers to continuously monitor for compliance, which involves a commitment of resources. Additionally, health care providers must participate in audits initiated by insurers which may reveal competitor's pricing, which in itself is highly anti-competitive. Furthermore, the negotiation process may be more costly due to the amount of diligence an analysis required as a result of accepting an MFN.
 - Bristol Hospital spent approximately \$113,712 and over 376 hours responding to an MFN audit last year.
 - Bristol Hospital has an MFN clause in one of its largest commercial health insurance contracts.
 - Bristol Hospital would not have a contract with this payer if it did not continue to accept the MFN clause in this payer contract.

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- Without this payer's contract Bristol Hospital would likely go out of business.
- **Increase in Price Terms:** MFN clauses affect a provider's ability to negotiate terms with individual plans, and prevent a provider from rewarding competitors who provide better service or less red tape in the processing of claims. Preserving and enhancing the concentration results in higher prices across the board, ultimately affecting the amounts paid by consumers.
- **MFN Clauses Discourage Innovation:** MFN clauses discourage providers from entering into innovative payment methodologies with other insurers. The federal reform legislation and other commentators agree that moving to non-fee for service payment methodologies which create incentives to improve quality and reduce cost is a key element to reforming the current system.

Last Legislative Session, Senate Bill 429, An Act Concerning Most-Favored Nations Clauses in Health Care Contracts was raised in the Public Health Committee – Our then Attorney General Richard Blumenthal submitted testimony in support of the bill. Attorney General Richard Blumenthal's Testimony is attached hereto as **EXHIBIT II**.

Finally below, is an excerpt from the Ohio 127th General Assembly House Bill 125 Joint Legislative Commission on Most Favored Nation Clauses in Health Care Contracts Report 2010, Statement of three (3) Commission Members, pages 30-31 which state:

"Another convincing detail that emerged from the Commission's Discussion is that there is a difference of opinion on the MFN issue within the insurance sector. Of the four insurers on the Commission, it appears that only one, Anthem, supports the use of MFNs in health care contracts. The other three – Aetna, Cigna and United Health Care – have all indicated that the existence of an MFN in Anthem's contract with providers has discouraged them (Aetna, Cigna and United Health Care) from entering or expanding in certain segments of Ohio's insurance market.

This may be the most persuasive fact that the Commission has heard in assessing the anti-competitive effect of MFN's. If United Health Care, the nation's largest insurer with \$90 billion in revenue, believes it cannot fairly compete in a market where an MFN is being used, it seems patently obvious that MFN's are in fact anti-competitive because of its negative impact on the suppression of market competition."

In closing, Bristol Hospital, Inc. appreciates the opportunity to present its testimony in support of H.B. 6471.

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Committee on Insurance and Real Estate

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**AN ACT CONCERNING MOST-FAVORED-NATIONS CLAUSES IN HEALTH CARE
CONTRACTS - EXPLANATORY STATEMENT
EXHIBIT I**

- **States that have either banned or restricted the use of MFN clauses in health care contracts:**
 1. **ALABAMA** – Reference, Ohio report states they ban MFN
 2. **ALASKA** – Bans clauses or place restriction on which plans may use MFN clauses
 3. **CALIFORNIA** – Bans clauses or place restriction on which plans may use MFN clauses
 4. **COLORADO** – Banned MFN in 2007
 5. **IDAHO** – Banned MFN clauses in 1998
 6. **INDIANA** – Banned MFN in 2007
 7. **KENTUCKY** – Bars insurer with a local market share of more than 20% from putting a MFN clause in contracts with physicians
 8. **MARYLAND** – Banned MFN in 2006
 9. **MASSACHUSETTS** – Banned in 2010
 10. **MINNESOTA** – Bans clauses or place restriction on which plans may use MFN clauses.
 11. **NEW HAMPSHIRE** – Bans clauses or place restrictions on which plans may use MFN clauses
 12. **NEW JERSEY** – Reference, Ohio report states they ban MFN
 13. **NEW YORK** - Reference, Ohio report states they ban MFN
 14. **OHIO** – Banned for hospitals in 2008
 15. **ORGEON** – Bans practices injurious to free competition
 16. **RHODE ISLAND** – Bans clauses or place restrictions on which plans may use MFN
 17. **VERMONT** – Banned MFN in 2009
 18. **WASHINGTON** – Bans clauses or place restrictions on which pans may use MFN clauses
 19. **WEST VIRGINIA** – Reference, Ohio report states they ban MFN
- **Pending states in litigation**
 20. **MICHIGAN** – United States of America and the State of Michigan VS. Blue Cross Blue Shield of Michigan, complaint filed in October 2010 citing egregious anticompetitive activities